



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/00BN/LAC/2022/0011**

Property : **Flat 80 MM2 Building, Pickford Street, Manchester,
M4 5BT**

Applicant : **Richard Francis**

Respondent : **MM2 Management Company Limited**

Type of Application : **Determination of liability to pay administration
charges under paragraph 5 Schedule 11 Commonhold
and Leasehold Reform Act 2002
Application under section 20C Landlord and Tenant
Act 1985
Application under paragraph 5A Schedule 11
Commonhold and Leasehold Reform Act 2002**

Tribunal Members : **Judge T N Jackson
Mr A Hossain MRICS, BSc (Hons) Estate Management**

**Paper determination
Date of Decision** : **12 October 2023**

DECISION

Decision

We determine that:

- a) the Applicant is not liable to pay the administration charges totalling £993.80 for the period 2018 to 2022.
- b) it is just and equitable in view of the outcome of the case to make orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5(A) of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 preventing the Respondent from recovering its costs in connection with these proceedings.
- c) the Respondent is to reimburse the Applicant the hearing fee of £100 within 28 days of the date of this decision.

Reasons for decision

Introduction

1. By application dated 21 November 2022, the Applicant seeks a determination as to whether he is liable to pay administration charges levied in relation to late payment of service charges, as detailed in paragraph 6 below.
2. He applies under section 20C of the Landlord and Tenant Act 1985 for a determination that the Respondent's costs in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant. He also applies, under paragraph 5(A) of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, for a determination that his liability to pay an 'administration charge in respect of litigation costs' is extinguished. He applies for reimbursement of the hearing fee of £100.

The Property

3. The Property is a 3 bedroomed flat in a purpose- built block.

The Lease

4. By virtue of a Lease dated 28th February 2003 between Genesis Estates (Manchester) Limited, Gleeson Homes Limited Persimmon Homes (North West) Limited (1), MM2 Management Company Limited (2) and Richard Francis (3), the Property was demised to the Applicant for a term of 999 years (less three days) from 1 January 2002 at a peppercorn rent.
5. The Applicant covenanted to pay a proportion of the Maintenance Expenses in accordance with the provisions of the 7th Schedule. 'Maintenance Expenses' were defined as money expended or reserved for expenditure by or on behalf of the Management Company in carrying out the obligations specified in the 6th Schedule. Tenant's covenants are set out in the 8th Schedule. The Management Company's covenants are set out in the 10th Schedule.

Background

6. The Applicant disputes the 'administrative fees' he was charged arising from the late payment of the Maintenance Expenses in the total of £993.80.

Stage 2 administrative fees

12.3.18	£40
14.2.19	£40
21.8.19	£40
23.7.21	£45
31.1.22	£45
26.7.22	£45

Stage 3 administrative fees

21.2.19	£40
28.8.19	£40
8.2.22	£65
2.8.22	£65
9.8.22	£80 (referral to legal)
20.8.22	£438 legal costs and £10.80 (Land Registry cost).

7. There is no dispute before us regarding the amount of the Maintenance Expenses. The Statements of Account for the relevant years demonstrate that the Applicant was late on several occasions in paying the Maintenance Expenses which were due six monthly in advance on 1st January and 1st July of each year. Late payment resulted in him being sent a generic email reminding him that the payment was late and which also charged an administrative fee in the sums and on the dates detailed above.
8. More recently, on 12 July 2022, the Respondent through its managing agent Zenith Management Limited, wrote to the Applicant advising him that the sum of £1301.81, (the July 2022/23 service charge of £1146.81 and arrears of £155), remained outstanding and that if a further letter needed to be sent, an administration charge of £45 would be applied to the account.
9. On 26 July 2022, the Respondent's agent wrote a Stage 2 letter to the Applicant advising that £1346.81 remained outstanding (including an administration charge of £45) and that unless payment was received within 7 days' legal action may be taken to recover the monies owed and further administration charges of £65 plus an additional fee for referral to their solicitors would be added to the account.
10. On 2 August 2022, the Respondent's agent sent a Stage 3 Final Arrears letter to the Applicant advising that £1411.81 remained outstanding, (including an administration charge of £65), and that they had been instructed to commence legal proceedings in 7 days unless the monies were settled in full. It advised that a further charge of £80 would be charged to the account if they had to instruct this action. It advised that once legal proceedings had been initiated that the Applicant would be liable for the costs incurred.
11. On 20 August 2022, solicitors acting for the Respondent or its agent wrote a Letter of Claim prior to county court proceedings advising that they were seeking recovery of a total of £1940.61 comprising arrears of £1491.81, legal costs of £438 and the cost of the Land Registry fee of £10.80.

12. On 22 August 2022, the Applicant paid £1,146.81 and advised the Respondent's solicitor that he had a number of concerns regarding the management of the Lease. He stated that:
 - a. The penalty charges being levied against an advanced payment and the rate of escalation of those charges were unreasonable and punitive; and
 - b. The Management Company had changed the locks on the apartment without his consent and he did not have access to the Property.
13. On 24 August 2022, the Respondent's solicitor acknowledged receipt of £1146.81, leaving a balance of £793.80 and that the account would be placed on hold for 4 weeks to allow the Applicant to seek legal advice.
14. On 1 September 2022, the Respondent's solicitors responded regarding the locks issue and also stated that their client 'maintain that all charges have been incurred correctly'.
15. On 15 September 2022, the Applicant paid the balance of £793.80 stating that this was under protest and that the administration charges and legal fees were not agreed or admitted. He raised a series of issues regarding the validity of the administration charges, all of which form the subject of his submissions to the Tribunal. He stated that he had received advice from the Leasehold Advisory Service to challenge the administration charges but wished to give the opportunity to the Respondent to respond to the issues before applying to the Tribunal.
16. On 20 September 2022, the Respondent's solicitor asked for evidence of the payment of £793.80, stated that they were reviewing the account with their client and would revert back to the Applicant once they had their comments.
17. On 29 September 2022, the Applicant chased the Respondent's solicitor for a response to his email of 15 September 2022. As at the date of the submission of his Statement of Case on 2 May 2023, he had received no response.
18. The Applicant applied to the Tribunal on 21 November 2022.

Directions

19. Directions dated 7 February 2023 sent to each party set out a timescale for submission of their respective Statements of Case/Response. Direction 1 directed the Respondent within 14 days to provide financial information and to explain 'the total administration charges payable for each year in dispute and explain (by reference to the Lease) the basis on which the charges were applied, calculated and apportioned'.
20. The Respondent failed to comply with Direction 1 by the required date of 21 February 2023. The Tribunal sent a reminder and required compliance by 22 March 2023. As there was no response, on 12 April 2023 the Tribunal wrote to both parties advising that the matter needed to progress and that the Applicant should comply with Directions 2-4 of the Directions dated 7 February 2023 within 21 days. On 13 April 2023, the Respondent's agent wrote to the Tribunal and provided copies of invoices and Statements of Account. It did not make reference to the provisions of the Lease as required by Direction 1. It advised that it had missed the deadline to issue its Statement of Response and asked for an extension until 24 April 2023 and that its intention was to have the Statement of Case and evidence by 20 April 2023. No Statement of

Response was received. The Applicant submitted his Statement of Case dated 2 May 2023.

Inspection/Hearing

21. Neither party requested either an inspection or hearing. Having read the papers submitted by the parties, we were satisfied that the matter could be determined on the basis of the papers only.

Submissions

The Applicant

22. The Applicant provided a written Statement of Case. The issues are as detailed in his letter to the Respondent's solicitor dated 15 September 2022 namely:

Relating to payability

- a. The Lease does not contain any clauses in schedules 6 or 7 allowing for these administration charges;
- b. The administration responsibilities in respect of 'Maintenance Expenses' should be covered from within the 'Maintenance Expenses' as specified in Schedule 6 clauses 13 and 20 and not applied as an additional charge;

Relating to reasonableness

- c. The 'Maintenance Expenses' are an advance payment;
- d. The administration charges are not linked to action or cost, charges have escalated at stages while the action (email with a template letter) remains the same;
- e. Very little administration is taking place, no communication attempt beyond a single template letter email has been made at stage 2 or 3;
- f. The time between the payment due date and stage 2 is inconsistently applied (ranging from 22-70 days, see below);
- g. Previous history shows payment has always been made and where a stage 3 notification sent, within an average of 10.7 days, to escalate to legal and incur significant additional cost at day 7 is unreasonable and unnecessary.

The Respondent

23. The Respondent did not provide a Statement of Response despite seeking an extension of time in which to do so.

Deliberations

24. To be permitted, an administration charge must be allowed under the provisions of the Lease. Whilst the Respondent's agent has provided copies of invoices and Statements of Account, it has not detailed, by reference to the Lease, the basis on which the administration charges have been applied, as required by the Directions. The Respondent's agent has not provided a Statement of Response.
25. The matter of which provisions of the Lease allowed the administration charges to be made was specifically raised by the Applicant in his letter to the Respondent's solicitors dated 15 September 2022, with a reminder on 29 September 2022. The Respondent's

solicitor failed to respond to what we consider to be a perfectly reasonable question and has still not done so.

26. In the absence of any assistance from the Respondent, its agent or solicitor, we have reviewed the Lease to identify under which provisions, (if any), the administration charges for late payment of the Maintenance Expenses could properly fall. We note that the Lease contains clauses within the 8th Schedule which allow administration charges for specific matters e.g Clause 28 provides for a charge of not less than £50 in relation to an assignment and Clause 34.3.1 provides for the payment on an indemnity basis of all costs/expenses incurred by the Management Company in seeking the superior Landlord's consent in accordance with the 10th Schedule. Therefore, it is clear that the person drafting the Lease was alive to the need to specify provision for administration charges. However, despite this, there is no specific provision which allows for an administration charge for late payment of Maintenance Expenses.

27. We have considered paragraph 2 of Part One of the 8th Schedule (Tenant's Covenants) which provides:

'To pay all costs charges and expenses (including legal costs and fees payable to a Surveyor) incurred by the landlord in or in contemplation of any proceedings or the service of any notice under Sections 146 and 147 of the Law of Property Act 1925 including the reasonable costs charges and expenses aforesaid of and incidental to the inspection of the demised premises the drawing up of schedules of dilapidations and notices and any inspection to ascertain whether any notice has been complied with and any such costs charges and expenses shall be paid whether or not forfeiture for any breach shall be avoided otherwise than by relief granted by the Court.'

28. We cannot see in any documentation to the Applicant from the Respondent's agent or solicitor any reference to the commencement or contemplation of proceedings under sections 146 and 147 of the Law of Property Act 1925. The Respondent's agent has not provided copies of any letters threatening or warning the Applicant regarding forfeiture. We therefore do not accept that this Clause allows the Respondent to impose the administration charges.

29. We have considered Clause 6 of Part 2 of the 8th Schedule in which the Tenant covenants:

'To pay the Management Company the Tenant's Proportion of the Maintenance Expenses at the times and in the manner herein provided and also to pay and Value Added Tax chargeable in respect of the same.'

We find that the Clause establishes that a service charge is payable but it does not include provision for charges for late payment of service charges.

30. We cannot find any Clause under the Tenant's Covenants in the 8th Schedule which would allow the Respondent to recover an administration charge for late payment of Maintenance Expenses.

31. The Applicant argues that the costs of chasing late payments falls within the 'Maintenance Expenses'.

32. Clause 13 of Part One of the 6th Schedule ('Maintenance Expenses') refers to the costs and expenses of:

'Generally managing and administering the Development and protecting the amenities of the Development and for that purpose employing a firm of managing agents (insofar as the management company think fit) and enforcing or attempting to enforce the observance of the covenants on the part of any Owner the flats [sic] as set out in paragraph 3 of the Tenth Schedule and of the covenants on the part of the Tenants of the Live/ Work Flats and the Commercial Units.'

33. Clause 20 of Part One of the 6th Schedule refers to:

'All costs expenses and outgoings whatsoever incurred by the Management Company in and about the discharge of the obligations on the part of the Management Company in particular (but without limiting the generality of such provision) those set out specifically in the 10th Schedule hereto and also the costs of providing any additional service or item deemed necessary or desirable by the Management Company.'

34. We agree with the Applicant's submission that the costs of chasing late payments is included within the Maintenance Expenses. We note the Service Charge Accounts for Service Charge period 2019 which describe the main costs that make up the budget for running the development. It refers to Managing Agents Fees as *'This is our fee for the full management of the development'* and 'Legal and Professional fees' which is described as *'A small allowance has been made for the costs associated with debt recovery costs. Where possible, this is recovered directly from defaulting Leaseholders to ensure the costs are kept to a minimum for other Leaseholders.'*

35. In conclusion, we do not accept that the Lease allows the Respondent to impose the administration charges for late payment of Maintenance Expenses. Therefore, we do not need to consider the question of the reasonableness or otherwise of the charges.

Section 20C Landlord and Tenant Act 1985

36. The Applicant applied for an order under the 1985 Act that the Respondent's costs in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant. We may make such order as we consider just and equitable in the circumstances.

37. When considering the application, it should be made clear that we make no findings as to whether the Respondent has a contractual liability under the terms of the Lease to recover its costs or the quantum of those costs. The exercise of our discretion is whether the Respondent should be entitled to recover any costs it had incurred in connection with these proceedings.

38. The Applicant has been successful in his application. The Respondent and its solicitor ignored the points raised by the Applicant in this Tribunal in earlier correspondence, which resulted in the application to the Tribunal. The Applicant was entirely justified in making his application to the Tribunal. The Respondent brought the application on itself. We therefore determine that it is just and equitable that an order be made under section 20C Landlord and Tenant Act 1985.

Paragraph 5(A) of Schedule 11 Commonhold and Leasehold Reform Act 2002

39. The Applicant also applied for an order under the 2002 Act to reduce or extinguish the Applicant's liability to pay an 'administration charge in respect of litigation costs'. For the same reasons as set out in the paragraph above, we make such an order.

Costs

40. Neither party made an application for costs and we make no such order.

Reimbursement of application fee

41. The Applicant seeks reimbursement of his application fee of £100. As the Applicant has been successful in the application to the Tribunal, we order the Respondent to reimburse the Applicant £100 within 28 days of the date of this decision.

Appeal

42. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson